

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I and II as product and process of making product. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products, or (B) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)).

However, the Examiner has not provided a sufficient example or reason to support the criteria required under § 806.05(f)). Therefore, the Examiner's reasoning is nearly a restatement of the Examiner's conclusion that the two groups are patentably distinct. As the Examiner has provided insufficient reasons in support of this belief, the Examiner has not met the required burden, and accordingly, the restriction is believed to be improper and should be withdrawn.

In addition, the Applicants have elected claims directed to a product. If the product claims are found allowable, Applicants request that the withdrawn process claims be rejoined (M.P.E.P. § 821.04).

Finally, Applicants respectfully submit that the Office has not shown that a serious burden exists in searching the entire application.

Applicants submit this application is now in condition for examination on the merits
and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Donald K. Drummond, Ph.D.
Registration No. 52,834

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)